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June 29, 1994

*ADMITTED IN VA ONLY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

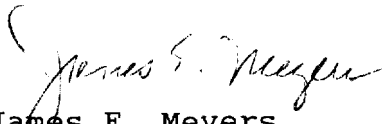
Re: MM Docket No. 92-266

Dear Mr. Caton:

On behalf of Pagosa Vision, Inc, there is transmitted herewith an original and five copies of its Comments.

Should additional information be necessary in connection with this matter, please contact the undersigned.

Very truly yours,


James E. Meyers
Counsel for
Pagosa Vision, Inc.

Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Implementation of Sections of)	
the Cable Television Consumer)	MM Docket No. 92-266
Protection and Competition)	
Act of 1992: Rate Regulation)	

COMMENTS OF PAGOSA VISION, INC.

Pagosa Vision, Inc. ("Pagosa"), through undersigned counsel, hereby submits its comments to the Fifth Notice of Proposed Rulemaking in MM Docket No. 92-266, above-captioned (FCC 94-38, released March 30, 1994). Pagosa is a small cable system operator of only cable systems with fewer than 1000 subscribers.

Commercial cable service can be and frequently is an important source of revenue which can offset upward pressure on consumer rates from higher per subscriber costs experienced by cable systems, particularly small systems. Moreover, unregulated commercial rates can enhance plant capability, as well as the availability to the general subscribership of unregulated services over the cable system that otherwise would not be introduced, thus providing subscribers more choice.

Pagosa is particularly concerned that cable operators, such as Pagosa, be able to provide commercial service to

casinos at rates different, i.e., higher, than those charged to residential consumers without prescribed residential offsets as suggested by the Commission in its proposal. For the casino class of commercial customer, cable rates should be fully negotiable without the impediment of direct or indirect rigidly-prescribed Commission limits upon the ultimate rate arrangement negotiated.¹ Otherwise, the cable operator will be deprived at the outset from negotiating the "best deal" or, as likely, of the incentive to take any deal, to the ultimate detriment of the plant and the subscribers.

Pagosa, for example, has one small system (400 subscribers) in rural Colorado where limited stakes (\$5.00) gaming has been recently introduced by popular vote. The economic health of rural Colorado is expected to considerably improve as casino establishments are introduced into the towns. Current plans typically envision a casino and a casino/hotel model. There are about sixty casinos in Pagosa's franchise area. Plans are underway to construct casino/hotel establishments as well.

¹While Pagosa is particularly concerned with commercial rates for casino and casino/hotel establishments, it nevertheless believes that the Commission should break out all categories of commercial cable subscribers that are not occupied on a residential basis by permanent occupants. Thus cable service to hotels/motels, offices, sports bars and other types of establishments where cable enhances the business's premises should be afforded deregulated status. (Hotels and motels cater to transients, not to the residents of the franchise area that are the intended beneficiaries of the cable franchise.)

The casino and the casino/hotel use cable television to attract gambling tourists. The casino/hotel establishment uses both cable and its hotel facility as a "calling card" to attract tourism. Casino hotel rates and amenities are deeply discounted and treated promotionally by the casino establishments. These casino and casino/hotel establishments want cable service and are willing to pay a competitive price. This is in keeping with their cable requirements which are more elaborate (and expensive) than provided to or justifiable for the general subscribers.

The casino and casino/hotels present an attractive opportunity for cable television. They also challenge the small cable operator to provide services and features over the system that otherwise would not be affordable or undertaken were the residential consumer customer base the only revenue potential. For example, Pagosa would be adding pay-per-view features, digital music, and additional sports programming for servicing the commercial casino and casino/hotel accounts that will also be available to residential subscribers to enjoy. Because of the small subscriber base, Pagosa's residential customers would not want to absorb the cost necessary to provide such services and features were they only for them. Nor would the demand for pay-per-view and other such programming by the residential subscribers warrant undertaking the introduction of such service in light of the costs involved.

By being able to negotiate an arms-length agreement with the casino establishment, Pagosa not only would be able to compete for the business, but it could recover the associated costs of construction, installation and service offerings from the commercial casino accounts without requiring the subsidy from the general subscribers that regulated operators are entitled to realize from any prudent investment in used and useful plant, facilities and services. Commercial rate strategies that enhance the cable plant or and service offerings available to the regular subscribers are an "in-kind" offset that the Commission should embrace.

Moreover, the elements of commercial rate agreements with the casinos and casino/hotels are peculiar to those establishments thus making associated costs more easily identifiable with such a commercial account. Costs associated with performing the installation and contracting with the programming and special equipment vendors, for example, are conducive to identification to the casino and casino/hotel account. By having negotiating flexibility to strike the "best deal," the cable operator can ensure that the commercial customer's rates reflect direct costs and that the cable operator can recover them flexibly through negotiated front-end and recurring charge schedules. This flexibility leaves the cost where it occurs, which is desirable from a consumer rate policy perspective.

While significant aspects of the commercial service to the casinos and casino/hotels will directly benefit cable subscribers, some will not. Increased service offerings, as mentioned, will provide offsetting subscriber benefits. Moreover, such a commercial account contract can be expected to provide the construction initiative that will make ancillary subscriber network improvement add-ons economical, whereas without the impetus of the commercial account construction, subscriber network enhancements may not otherwise be cost effective.

On the other hand, commercial premises-specific requirements of the contract that do not directly benefit the general subscriber network are charged to and paid for by the commercial subscriber. For example, a casino or a casino/hotel cable contract will require an integrated installation to the facility including build-outs to portions of the gaming areas, restaurant premises, some common areas as well as to the hotel rooms. Because of copyright and licensing arrangements with the programmers, discrete programming ensembles will need to be configured and delivered to areas where common viewing is possible and to private viewing premises. Customized channeling for on-premises insertions will also have to be constructed and provided as part of the arrangements. These features, while enhancing the cable system in general, do not provide direct benefits to the general subscribers (with the exception of

being able to introduce programming features systemwide). The cable operator can contain the costs to the commercial customer's contract with a flexible commercial rate policy that permits a higher rate than that charged to general subscribers.

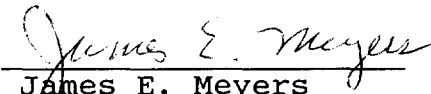
Casinos and casino/hotel commercial accounts (generally, as any other commercial account) have satellite service as an option to the cable installation. This form of "effective competition" in a commercial subscriber environment ensures that any rate, although higher than the regulated general subscriber rate, will be inherently reasonable.² The casinos and casino/hotels will pay the competitive rate if the cable service they require is there. It is inherently unfair that commercial establishments under these circumstances should receive the windfall of the Commission's rate regulation program on the back of the

²The casino/hotels generally have the same requirements for cable television service for all of their establishments on the gaming circuit, irrespective of the size of the community, and irrespective of the fact that Pagosa or any other small system is the franchised provider. Since the economic motive for the casino is to enhance the premises to draw tourists to gamble, the casino does not expect to and is not motivated to make a profit from cable television (or from hotel receipts), but from gambling revenues. Accordingly, the casino/hotels (wherever they have establishments on the gaming circuit) require more expensive cable service and facilities than stand-alone hotels and motels who undertake cable television expenditures for the different reason of maximizing room receipts. (Commercial rates to conventional hotels and motels should be deregulated as well since these establishments likewise have satellite "effective competition", and, as mentioned, their clientele are transients and not intended beneficiaries of the cable television franchise.)

general subscribers -- particularly when the system is a small system, such as Pagosa's with its 400 subscribers.

Accordingly, cable operators should be free to fashion commercial cable service agreements, including where the commercial rate is higher than the regulated rate for general subscribers, where the general subscribers will realize an "in-kind" benefit from the commercial service and, particularly, with respect to the casinos and casino/hotels in rural Colorado.

RESPECTFULLY SUBMITTED,
PAGOSA VISION, INC.

By: 
James E. Meyers
Its Counsel

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